

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

M&T CAPITAL AND LEASING
CORPORATION,

Plaintiff,

v.

FREON LOGISTICS,

Defendant.

Case No. 2:23-cv-01171-WBS-CSK

ORDER

Plaintiff M&T Capital and Leasing Corp.'s third motion for default judgment was filed on April 17, 2025, and its supporting declarations were filed on June 9, 2025. (ECF Nos. 33, 37.)¹ In its third motion for default judgment, Plaintiff seeks damages in the amount of \$4,524,119.29. See Pl. Third Mot. (ECF No. 33.) Plaintiff's evidentiary support, however, does not support this figure. "Plaintiff has the burden of proving damages through testimony or written affidavit." See *Bd. of Trs. of the Boilermaker Vacation Tr. v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

For example, Plaintiff submits that the total damages of \$4,524,119.29 as of April 30, 2024 are supported by the Account Balance Worksheet submitted as Exhibit J to the Declaration of Robert Van Tine (ECF No. 37). Van Tine Decl. ¶ 29. But the Account

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 302(c)(19).

1 Balance Worksheet provides a different total damages amount than the motion, and
2 different line item amounts than the underlying evidentiary support submitted. The
3 Account Balance Worksheet provides a total amount due of \$4,581,805.82 as of January
4 31, 2024, but Plaintiff clearly states in its motion and the Van Tine declaration that the
5 total amount due as of April 30, 2024 is a lower amount—\$4,524,119.29. *Compare* Pl.
6 Third Mot. at 5, 8, 10, 14 & Van Tine Decl. ¶ 29, *with* Van Tine Decl., Exh. J. In addition,
7 Plaintiff seeks expenses of \$116,565.42, which are itemized in Exhibit K to the Van Tine
8 Declaration as was required by the Court’s March 28, 2024 order denying without
9 prejudice Plaintiff’s first motion for default judgment (ECF No. 18 at 6), but the Account
10 Balance Worksheet lists \$176,923.90 in expenses owed. *Compare* Van Tine Decl. ¶ 33
11 & Exh. K (itemized expenses), *with* Van Tine Decl., Exh. J. Finally, Plaintiff submitted
12 two separate declarations with substantiation in support of its attorney’s fees and legal
13 costs, and these amounts also differ from the Account Balance Worksheet. *Compare*
14 Declarations of Evan S. Goldstein (ECF No. 37-1) and W. Scott Cameron (ECF No. 37-
15 2), *with* Van Tine Decl., Exh. J (\$14,617.33).

16 Because the Account Balance Worksheet is inconsistent with the itemized
17 evidentiary support, the Court rejects the Account Balance Worksheet. While Plaintiff
18 has submitted sufficient evidentiary support for its expenses through its itemized
19 expenses list in Van Tine Exhibit K and of its attorney’s fees and legal costs through the
20 Goldstein and Cameron declarations, Plaintiff has not submitted sufficient evidentiary
21 support for its principal owed and interest because this is based on the Account Balance
22 Worksheet, which the Court rejects. See Van Tine Decl. ¶ 29 & Exh. J. Plaintiff’s
23 submission also does not separately identify the principal, or how the \$948,852.99
24 prejudgment interest was calculated. See Van Tine Decl., Exh. J.

25 Plaintiff is given one final opportunity to submit sufficient evidentiary support for its
26 request for \$4,524,119.29 in damages, **which must be filed within 14 days of this**
27 **order (on or by June 26, 2025)**. Plaintiff’s submission must include a corrected
28 summary table with the total damages sought and each category that makes up this

1 total. The submission must also separately identify the amounts for the principal(s) and
2 for prejudgment interest, with an explanation for how prejudgment interest was
3 calculated. After Plaintiff's supplemental submission is filed and served, Defendant will
4 be provided with an opportunity to respond. **Defendant's response is due within 14**
5 **days after Plaintiff's supplemental submission is served.**

6 Prejudgment interest is a substantive part of Plaintiff's claims, and state law
7 generally governs the award of prejudgment interest in diversity actions. *Oak Harbor*
8 *Freight Lines, Inc. v. Sears Roebuck & Co.*, 513 F.3d 949, 961 (9th Cir. 2008); *see also*
9 *Phillips 66 Co. v. Petros Rai Stations, LLC*, 2016 WL 1654957, at *8 (E.D. Cal. April 26,
10 2016) ("When a contract includes a valid choice of law provision, the court applies the
11 law of the chosen state to find the appropriate prejudgment interest."). In identifying the
12 prejudgment interest sought, Plaintiff must provide sufficient information for the Court to
13 make a determination by sufficiently describing how prejudgment interest was
14 calculated, which state law was applied (California v. Connecticut), and whether the
15 interest rate identified in the agreements are consistent with state law. It appears that
16 different state law applies to the various agreements at issue here with Connecticut law
17 governing the Master Loan Agreement and California law governing the Equipment
18 Finance Agreements. To the extent Plaintiff seeks prejudgment interest at a different rate
19 than provided by state law, Plaintiff's supplemental briefing must include the legal
20 authority for seeking a different rate. For example, Plaintiff's Account Balance Worksheet
21 includes a footnote that states that an 18% per annum interest rate was applied, *see*
22 *Van Tine Decl.*, Exh. J at n.2, but California law provides for interest at a rate of 10% per
23 annum in contract cases after a breach. *See Cal. Civ. Code* § 3289(b). Plaintiff may also
24 elect to withdraw its request for prejudgment interest. Plaintiff is reminded that its filings
25 must be served on Defendant, with a proof of service filed.

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Within 14 days of this order (on or by June 26, 2025), Plaintiff shall submit its
28 supplemental brief and evidentiary support as outlined above with a proof of

1 service filed; and

2 2. Defendant's response is due within 14 days after Plaintiff's supplemental
3 submission is served.

4 Dated: 06/12/25

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6 CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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